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Item 11 of the provisional agenda

INDEPENDENCE AND IMPARTIALITY OF THE JUDICIARY, JURORS AND ASSESSORS AND THE INDEPENDENCE OF LAWYERS

Report on the independence of the judiciary and the protection of practising lawyers, prepared by Mr. Louis Joinet, in accordance with resolution 1990/23 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities

Addendum

Note by the Special Rapporteur

1. I have received from the Government of Israel information on cases of measures and practices concerning the independence of the judiciary and the protection of practising lawyers dealt with in the report. The cases of measures and practices concerning the independence of the judiciary and the protection of practising lawyers in that country are dealt with in paragraphs 234 and 235 of the report.

2. The communication received from the Government of Israel is reproduced below in extenso.

ISRAEL

[16 July 1991]

1. At the outset it should be stressed, as is indeed clear to the Sub-Commission, that in the administration of justice in the administered areas, no distinction is made as to the professional calling of any particular individual suspected of violating the law. Anyone suspected of acting contrary to the criminal ordinances duly in force in the areas may, pursuant to such instruments, be detained for investigation and trial or, as conditions warrant, may be subject to other administrative measures. The sole criterion is the substantive activity of the alleged offender, whether he be a driver, lawyer, porter or even a judge. Thus, the jurists listed in the above letter from the Special Rapporteur dated 13 June 1991 were detained only because they were suspected of actual involvement in activities which endangered the security of the State of Israel, endangered public safety and order in the administered areas or constituted a danger to the Israeli administration authorities.

2. Such activities include membership of or support for some of the world's most well-known terrorist organizations, such as the "Democratic Front for the Liberation of Palestine" (Mr. Shaher Aruri) and the PLO (Mr. Adnan Abu Leila of Nablus).

3. The mere fact that any particular detainee is a lawyer cannot grant him or her any extra benefit to which a layman is not entitled.

4. With a view to clarifying what appears to be a misconception as to the reasons for detention of the jurists referred to, the following factual details concerning some of the jurists mentioned may be relevant.

5. Mr. Adnan Abu Leila was placed under administrative detention for a period of three months as a result of his activity on behalf of the "Fatah" terror organization, whilst exploiting his status as a lawyer. It will be noted that Mr. Abu Leila was detained for a considerably shorter period than that permitted according to the applicable regulations, as this was his first instance of detention. His detention order was issued only following the approval of the Military Advocate General himself, in the light of Mr. Abu Leila's being a lawyer. Mr. Abu Leila appealed his detention order on 11 October 1989, as was his right according to security legislation, which appeal was turned down by an appeals committee headed by a legally qualified military judge.

6. Mr. Muhamad Shadid was held in administrative detention for six months, because of his active role on behalf of the "Democratic Front for the Liberation of Palestine" (DFLP). Mr. Shadid continued his involvement in violent activity even while detained. As in the case of Mr. Abu Leila, Mr. Shadid's detention order was issued only after the Military Advocate General gave his prior approval. Mr. Shadid's appeal against the detention order was turned down by the Appeals Committee on 7 June 1989.

7. It will be further noted that this was not Mr. Shadid's first period of detention. Previously, in March 1988, he had been held in administrative detention, originally for a period of six months. In June 1988, after serving three months, Mr. Shadid was released as a bona fide gesture. However, he resumed his activities as a senior DFLP activist in the Tulkarem district and was involved in planning and incitement to perpetration of acts of violence and terror including riots and attacks on Palestinians thought by him and his colleagues to be collaborating with the authorities.